



OFFICE OF THE POLICE COMMISSIONER
ONE POLICE PLAZA • ROOM 1400

GHAN

January 4, 2013

Memorandum for: Deputy Commissioner, Trials

Re: **Police Officer Alberto Cruz**
Tax Registry No. 917370
46 Precinct
Disciplinary Case No. 2010-0036

The above named member of the service appeared before Assistant Deputy Commissioner Amy J. Porter on October 2, 2012 and was charged with the following:

DISCIPLINARY CASE NO. 2010-0036

1. Said Police Officer Alberto Cruz, while assigned to the 46th Precinct, on or about and between August 12, 2009, and September 21, 2009, did knowingly associate with Person A, a person reasonably believed to be engaged in, likely to engage in or to have engaged in criminal activities.

P.G. 203-10, Page 1, Paragraph 2(c)

**PUBLIC CONTACT – PROHIBITED
CONDUCT/GENERAL REGULATIONS**

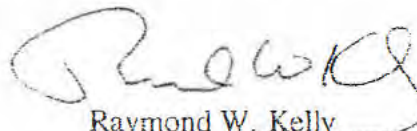
2. Said Police Officer Alberto Cruz, while assigned as indicated in Specification #1, on or about July 21, 2008, having been given a direct order to cease contact with Person A did fail and neglect to comply with said order. (*As amended*)

P.G. 203-03, Page 1, Paragraph 2

COMPLIANCE WITH ORDERS

In a Memorandum dated November 7, 2012, Assistant Deputy Commissioner Amy J. Porter found the Respondent Guilty of Specification Nos. 1 and 2 in Disciplinary Case No. 2010-0036. Having read the Memorandum and analyzed the facts of this matter, I approve the findings, but disapprove the penalty.

Police Officer Cruz's continued misconduct warrants the forfeiture of thirty (30) vacation days, plus one (1) year dismissal probation as a disciplinary penalty.


Raymond W. Kelly
Police Commissioner



POLICE DEPARTMENT

November 7, 2012

MEMORANDUM FOR: Police Commissioner

RE: Police Officer Alberto Cruz
Tax Registry No. 917370
46 Precinct
Disciplinary Case No. 2010 0036

The above-named member of the Department appeared before the Court on October 2, 2012, charged with the following:

1. Said Police Officer Alberto Cruz, while assigned to the 46th Precinct, on or about and between August 12, 2009 and September 21, 2009, did knowingly associate with Person A, a person reasonably believed to be engaged in, likely to engage in or to have engaged in criminal activities.

P.G. 203 10, Page 1, Paragraph 2(c) – PUBLIC CONTACT PROHIBITED
CONDUCT/ GENERAL REGULATIONS

2. Said Police Officer Alberto Cruz, while assigned as indicated in Specification #1, on or about July 21, 2008, having been given a direct order to cease contact with Person A did fail and neglect to comply with said order. (*As amended*)

P.G. 203-03, Page 1, Paragraph 2 COMPLIANCE WITH ORDERS

The Department was represented by Pamela Naples, Esq., Department Advocate's Office, and Respondent was represented by John Tynan, Esq.

Respondent, through his counsel, pleaded guilty to the subject charges. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

DECISION

Respondent, having pleaded Guilty, is found Guilty as charged.

SUMMARY OF EVIDENCE IN MITIGATION

Respondent was appointed to the Department in July 1996 and has worked in the 46 Precinct for approximately 13 years. In 2008 he met Person A at a Burger King where she was working. In 2009 he began dating her. Three months after they had been dating she informed him that she had a criminal record that related to drugs and that she had been incarcerated.

The report provided to and reviewed by this Court shows that Person A had a criminal history from 1986 through 1993. Her record consisted of seven drug or drug-related misdemeanor convictions and one drug felony conviction.¹

Respondent testified that when he learned about her criminal history, Person A was no longer using drugs and they were already living together. They continued to live together for approximately three years. During the course of their relationship, [REDACTED]. While he was living with her he pled guilty to Departmental charges of "criminal association" and said he received a penalty of 22 days.² He had also been told during an official Departmental interview on July 31, 2008 to cease all contact with Person A.

But he did not immediately comply with this order. When Respondent had to end their relationship Person A was shocked and became very distraught. He felt he could not just abruptly move out and leave her. [REDACTED]. She was not working and he was paying the rent.

¹ This information was submitted by the Assistant Department Advocate during the discovery process.

² In fact, he received a penalty of 20 days (see attached confidential memorandum).

He did not inform the Department that he could not move out right away or end the relationship immediately. He decided not to inform the Department because it had made it clear to him that he had to move and “they didn’t care” about the psychological consequences to Person A. He did move out of the apartment within three to four months.

Respondent stated that after he left the apartment, he saw Person A once or twice on an interim basis over the next year. Later he clarified that he said he saw her “maybe five or six times” in her apartment. He believed that the last face-to-face contact he had with Person A was six or seven months after he had left the apartment. On cross examination, the Respondent admitted he also had phone, text and email contacts with Person A and at some point these non-face-to-face contacts were almost everyday.

PENALTY

In order to determine an appropriate penalty, Respondent’s service record was examined. See *Matter of Pell v. Board of Education*, 34 NY 2d 222 (1974). Respondent was appointed to the Department on July 26, 1996. Information from his personnel record that was considered in making this penalty recommendation is contained in an attached confidential memorandum.

The Respondent pled guilty and has accepted responsibility but asks for a penalty less than the 30 days and dismissal probation recommended by the Department.

In *Case No. 86580/10* (April 12, 2011), the Police Commissioner rejected the trial judge’s recommended penalty of vacation days along with dismissal probation. This case involved a sergeant who, despite being ordered to desist, remained in a relationship with

a woman who had a drug and alcohol problem and ongoing contact with the criminal courts. Her criminal activity also brought the sergeant into contact with the police.

The conduct in this case is far less egregious and does not merit the Department's recommendation for dismissal probation. Respondent intended to and ultimately did comply with the Department's order. Person A had not been involved in any known criminal activity for 16 years. No evidence was presented that Person A's distant criminal past involved Respondent in any criminal conduct.

Respondent did not deny his continued contact with Person A. He did not move out immediately. After he moved out of their apartment, he continued to remain in contact with her. His contact involved some face-to-face meetings, phone conversations, emails, and text messages. He felt it was wrong to immediately abandon a woman with whom he was living and for whom he cared. He tried to end the relationship gradually and with compassion. Although he was not able to give exact times and dates, he did assert that within ten months to a year after the order was given, he had ended all contact with Person A. He gave uncontroverted testimony that he is no longer in contact with her. Although he did not immediately comply with the Department's order, his conduct reflected an effort to comply with the order with civility.

Therefore, it is recommended that Respondent forfeit 15 vacation days as a penalty in this matter.



Respectfully submitted,

Amy J. Porter
Assistant Deputy Commissioner Trials

POLICE DEPARTMENT
CITY OF NEW YORK

From: Assistant Deputy Commissioner – Trials
To: Police Commissioner
Subject: CONFIDENTIAL MEMORANDUM
POLICE OFFICER ALBERTO CRUZ
TAX REGISTRY NO. 917370
DISCIPLINARY CASE NO. 2010-0036

In 2011 and 2010, Respondent received an overall rating of 3.5 “Highly Competent/Competent” on his annual performance evaluation. In 2008, he was rated 4.0, “Highly Competent.” He has been awarded one medal for Excellent Police Duty.



Respondent has been the subject of one prior formal disciplinary proceeding. On October 8, 2008, Respondent received a penalty of 20 vacation days after pleading guilty to having knowingly associated with an individual believe to have engaged in criminal activity and to having changed his residence and phone number and neglecting to notify his commanding officer of this change.

For your consideration.

A handwritten signature in cursive script, appearing to read "Amy J. Porter".

Amy J. Porter
Assistant Deputy Commissioner - Trials